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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13
14 FINISAR CORPORATION, a Delaware
corporation,

15 Plaintiff,

16 v.

17
18 U.S. BANK TRUST NATIONAL
ASSOCIATION, a national banking
19 association, not in its individual capacity,
but solely in its capacity as Indenture
20 Trustee in behalf of all Holders of Finisar
Corporation's 5¼% Convertible
21 Subordinated Notes due 2008, 2½%
Convertible Senior Subordinated Notes due
22 2010, and 2½% Convertible Subordinated
Notes due 2010; and DOES 1 through 10,
23 inclusive,

24 Defendants.
25

Case No. 5:07-CV-04052-HRL

**DEMAND FOR JURY TRIAL BY
PLAINTIFF FINISAR CORPORATION**

Magistrate Judge: Howard R. Lloyd

1 WHEREAS, on June 22, 2007, plaintiff Finisar Corporation (“Finisar”) commenced the
 2 above-captioned action (the “Action”) by filing in the Superior Court of the State of California for
 3 the County of Santa Clara (the “State Court”) its “Complaint for Declaratory Relief”
 4 (“Complaint”) against defendant U.S. Bank Trust National Association (the “Bank”) in its
 5 capacity as indenture trustee under those certain trust indentures correlating to the 5¼%
 6 convertible subordinated notes due 2008, 2½% convertible senior subordinated notes due 2010,
 7 and 2½% convertible subordinated notes due 2010 referenced in the caption hereof; and

8 WHEREAS, on or about August 6, 2007, Bank filed in the State Court its “Answer to
 9 Complaint for Declaratory Relief” (the “Answer”); and

10 WHEREAS, on or about August 7, 2007, Bank filed in this Court its “Notice of Removal”
 11 (the “Notice of Removal”); and

12 WHEREAS, on or about August 8, 2007, Bank filed in the State Court a copy of its
 13 Notice of Removal,

14 NOW THEREFORE, without waiver or limitation of any right to seek remand of the
 15 Action to the State Court as permitted and authorized by applicable law, and in light of the
 16 requirement of Federal Rule of Civil Procedure 81(c) that a jury demand be filed within ten days
 17 after service of the Notice of Removal,¹ Finisar hereby demands TRIAL BY JURY of all causes
 18 and issues in the above-captioned action so triable, howsoever—whether by its own Complaint,
 19 by the Bank’s Answer, or otherwise—such causes and/or issues may be put at issue.

20 DATED: August 16, 2007

Respectfully submitted,

21 Sterling A. Brennan
 22 WORKMAN NYDEGGER A PROFESSIONAL CORPORATION
 23 Caroline McIntyre
 24 BERGESON, LLP

25 By /s/ Sterling A. Brennan
 26 Sterling A. Brennan
 27 Attorneys for Plaintiff FINISAR CORPORATION

28 ¹ See *Benjamin v. Natural Gas Pipeline Co. of Am.*, 793 F.Supp. 729, 732 (S.D. Tex. 1992) (noting that the deadlines imposed by 28 U.S.C. § 1447(c) and Federal Rule of Civil Procedure 81(c) “create the situation where jury demands will often be filed before remand motions”; and holding that, “[i]n light of this timing conflict, it would be ludicrous to conclude that the filing of a jury demand before a remand motion constitutes acquiescence to the federal forum and a waiver of the right to remand an improperly removed case”).

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: D. Anthony Rodriguez, drodriguez@mofo.com; Abby E. Wilkinson, awilkinson@faegre.com; Evi K. Schueller, eschueller@mofo.com; Michael B. Fisco, mfisco@faegre.com; Paul T. Friedman, pfriedman@mofo.com.

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